

REMARKS

Claims 91-133 remain pending in this application. Claims 91, 99 and 125-130 are independent. Favorable reconsideration is requested.

In the Office Action, restriction to one of the following inventions was required, citing to MPEP §806.05(d) (subcombinations usable together in a single combination):

Group I. Claims 91-98 and 133

Group II. Claims 99-129

Group I. Claims 130-132

Applicants hereby elect the invention of Group I, with traverse. The traversal is on the grounds that the Examiner has failed to establish the necessary predicates for a restriction requirement under MPEP §806.05(d).

As a first point, this application was filed in 1999 and claims directed to the inventions listed above have been subject to substantive examination and search numerous times. Applicants respectfully submit that there is no basis to hold, without evidentiary support, that examining these claims will impose an *additional* serious burden on the Examiner.

Secondly, the Office Action states that the three indicated Groups are directed to subcombinations usable together in a single combination. Even if true, this alone does not establish that a restriction requirement is proper.

As stated in MPEP §806.05(d) (emphasis added):

“Furthermore, restriction is **only** proper when there would be a serious burden if restriction were not required, as evidenced by separate classification, status, or field of search.”

The Office Action does not make this required showing. It does not state that separate classification is required, nor does it indicate what separate classifications might be involved. It does not state that separate fields of search are required, or what they might be. It only refers to “status” as follows (paragraph 4, page 4):

“4. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.”

Accordingly, the Office Action does not satisfy the second requirement of MPEP §806.05(d). It proposes only that if the inventions are directed to “divergent subject matter,” then they automatically have a separate “status” and therefore searching would automatically be a “serious burden.” Applicants respectfully disagree. MPEP §806.05(d), as quoted above, identifies the requirement of showing a serious burden as being in addition to a demonstration of separate inventions; it does not state that a serious burden is demonstrated **because of** the different inventions. The Examiner has cited no separate areas or classifications to be searched, or why searching the inventions would create a “serious burden.” She simply states that the serious burden exists. This is clearly insufficient under the MPEP.

Moreover, this prosecution is in its 8th year. In the previous Office Action, claim terminology was suggested by the previous Examiner that Applicants believed would

make their claims allowable. Accordingly, Applicants amended their claims. Now the new Examiner has issued a restriction requirement, asserting a “serious burden.”

Applicants respectfully submit that a restriction requirement not supported by the evidence required by the MPEP is improper. Applicants respectfully request that the restriction requirement be withdrawn.

In light of the foregoing remarks, Applicants respectfully submit that Claims 91-133 are patentably distinct over the prior art of record, that the application is in proper form for allowance of all claims, and earnestly solicit a notice to that effect.

Respectfully submitted,

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Date: April 12, 2007

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